

**B List Errata to April 25, 2003 FAW Publication Draft:**  
**For consideration of adoption by South Florida Water Management District**  
**Governing Board on June 12, 2003**

**( Changes to the April 25, 2003 FAW Publication Draft  
are Highlighted in Gray)**

### **2.3.9 Drainage Districts**

Applicants for an individual or general permit who are dependant users pursuant to Section 2.7.3.A. and are supplied water by a permitted Drainage or Water Control District do not need to be permitted separately for supplemental quantities unless there is a change in the withdrawal source for which the Drainage or Water Control District has no authority or permission to use. The allocation of the supply from the additional source will be authorized through the issuance of a separate permit specific to the new source classification.

### **2.3.10 Micro Irrigated Citrus**

The annual allocation for micro irrigated citrus will be calculated using methodology and coefficients described in Section 2.3.2. The maximum month allocation will be defined by the highest month value for full evapotranspiration for either March, April or May, as determined using the methodology in Section 2.3.2. In the event that the allocation calculated by this methodology is insufficient to meet the supplemental irrigation requirements of an applicant's grove under a 1 in 10 year drought condition, the applicant may apply for an allocation in excess of the allocation calculated by Section 2.3.2. In such circumstances, the applicant must affirmatively demonstrate the need for a higher allocation by provision of information such as: site specific soil hydrologic characteristics, depth to the water table, salinity of irrigation water (when additional water is needed to flush salts from the soil), calibrated historic pumpage data, or the results from an on-site irrigation efficiency evaluation conducted by a qualified irrigation auditor, such as a Mobile Irrigation Lab. In the event the irrigation water exceeds 1200 1800-milligrams per liter total dissolved solids, the maximum month allocation will be increased to include 1 inch of water for the purposes of flushing accumulated salts from the soil.

### **3.3 Evaluation of Impacts to Wetlands and Other Surface Waters**

This Section establishes the standards and thresholds for protection of wetlands and other surface waters from harm pursuant to the condition for permit issuance in Rule 40E-2.301(1)(c), F.A.C., including ensuring a water use shall not be

harmful to the water resources of the area and is otherwise consistent with the overall objectives of the District. The standards and thresholds specified herein shall apply to all water uses, including applications for the initial use of water and modifications and renewals of consumptive use permits, and authorized water uses, herein referred to as the "water use". In its evaluation of the applicant's water use, the District shall consider the extent of hydrologic alterations caused by the applicant's water use, except as otherwise provided herein.

To provide reasonable assurances of compliance with the condition of issuance in Rule 40E-2.301(1)(c), F.A.C., an applicant must demonstrate that hydrologic alterations caused by the water use shall not adversely impact the values of wetland and other surface water functions so as to cause harm to the:

A. abundance and diversity of fish, wildlife and listed species; and

B. habitat of fish, wildlife, and listed species.

For purposes of this Section, an adverse impact to the value of wetland and other surface water functions in violation of the above shall constitute "harm."

This Section requires assessment of whether impacts of a water use constitute harm. If a water use would cause harm, then the applicant must comply with the elimination or reduction of harm provisions pursuant to Section 3.3.5, and mitigation requirements of Section 3.3.6.

Impacts to wetlands and surface water bodies associated with wetland enhancement, restoration, creation, preservation or other mitigation permitted pursuant to Part IV of Chapter 373, F.S., or other wetland regulatory program implemented by a local, regional, or federal governmental entity, shall be considered under this Section.

Impacts on wetlands and other surface waters not caused by the water use, including, but not limited to, impacts caused by existing surface water management activities, drainage, water table lowering, roads, levees and adjacent land uses, are not considered under this Section.

The hydrologic characteristics resulting from construction or alterations undertaken in violation of Chapter 373, F.S., or District rule, order or permit, shall be evaluated based on historic, pre-violation conditions, as if the unauthorized hydrologic alteration had not occurred.

### **3.3.1 Wetlands and Other Surface Waters**

A. Delineation. Wetlands and other surface waters within the area of influence of the water use, delineated pursuant to Sections 62-340.100, F.A.C.

through 62-340.600, F.A.C. as ratified by Section 373.4211, F.S., are subject to this Section, except as provided in subsection B below.

In accordance with Rule 62-340.300(1), F.A.C., reasonable scientific judgement shall be used to evaluate the existence and extent of a wetland or other surface water, including all reliable information, such as visual site inspection and aerial photo interpretation, in combination with ground truthing. In addition, relevant information submitted pursuant to Rule 62-340, F.A.C, in support of an Environmental Resource Permit/Surface Water Management Permit shall be considered. Field delineations of wetlands and other surface waters boundaries shall be required if such boundaries are in dispute.

In determining the location and category of wetlands and other surface waters, the applicant may consult several sources of information for guidance, as part of the information identified in Section 3.3.2. This includes the staff reports of previously issued Environmental Resource and Surface Water Management Permits for the site and adjacent sites, National Wetland Inventory (NWI) Maps, Land Use/Land Cover maps, Natural Resource Conservation Service soils maps, formal and informal wetland determinations conducted by the District, and wetland maps produced by local governments. District staff may inspect the site to confirm the location, categorization and delineation of wetlands and surface waters, and other site specific information. Site specific topographical data including elevations of hydrologic indicators, wetland boundary and bottom elevations shall be required in the event that the categorization of a wetland or other surface water is in question. In the event that access to offsite wetlands or other surface waters has been denied by the property owner, the District and the applicant shall mutually agree on a method of establishing the locations, categorizations and delineations of the offsite wetlands or other surface waters.

B. Exclusions. Harm to the following wetlands and other surface waters shall not require elimination or reduction of harm and mitigation, under this Section:

1. Isolated wetlands one half (1/2) acre or less in size unless:

- (a) The wetland or other surface water is used by threatened or endangered species; (Nothing herein is intended to relieve an applicant of the obligation to comply with the Florida Fish and Wildlife Conservation Commission (FWC) rules pertaining to listed species, and with the Federal Endangered Species Act.)
- (b) The wetland or other surface water is located in an area of critical state concern designated pursuant to Chapter 380, F.S.; or

- (c) The wetland or other surface water is connected by standing or flowing surface water at seasonal high water level to one or more wetlands, where the combined wetland acreage is greater than one half acre.
- 2. Wetlands or other surface waters which have been authorized to be impacted to the extent established in a construction approval through an Environmental Resource Permit or a Surface Water Management Permit issued under Part IV of Chapter 373, F.S.
- 3. Constructed water bodies including borrow pits, mining pits, canals, ditches, lakes, ponds, and water management systems, not part of a permitted wetland creation, preservation, restoration or enhancement program. However, consideration of the design functions of water management systems shall be considered by Section 3.6, Existing Offsite Land Uses.
- 4. Wetlands or other surface waters to the extent they have been specifically authorized to be impacted or mitigated pursuant to Sections 3.3.5, 3.3.6, or 3.3.7 in a consumptive use permit, unless the applicant proposes additional impacts.

### **3.3.2. Permit Application Submittals**

The following shall be included in the applicant's submittal:

- A. For purposes of determining whether the wetland or other surface water is excluded under Section 3.3.1.B., the applicant shall provide supporting documentation, including a scaled map and recent aerial photograph marked with the wetland or other surface water location and reason for being excluded under Section 3.3.1.B. If it is demonstrated that the wetland or other surface water is excluded under Section 3.3.1.B., no additional information submittals shall be required under this Section.
- B. For wetlands or other surface waters that are not excluded under Section 3.3.1.B, scaled maps and recent aerial photographs that identify:
  - 1. The area of influence of the water use;
  - 2. In accordance with Section 3.3.1.A., the locations of all wetlands and other surface waters that occur within the area of influence of the water use, including wetlands and other surface waters located outside the applicant's property boundaries;

3. The locations of existing and proposed withdrawal facilities; and
4. The categorization of each wetland or other surface water located within the area of influence of the water use as described in Section 3.3.3.
- C. Information about the current condition of the wetlands and other surface waters and the hydrology.
- D. Information regarding the potential impact of the water use on the wetland or other surface water in its current condition.
- E. Information regarding site specific considerations required to be submitted pursuant to Section 3.3.4.3.
- F. Where there is potential for harm, information required to determine the extent of elimination or reduction of harm pursuant to Section 3.3.5 and mitigation required under Section 3.3.6, including an assessment of the use of the wetlands and other surface waters by listed species.
- G. A monitoring plan to assess the effects of the water use, if required. A monitoring plan shall be required when necessary to provide continued verification that no harm is occurring due to the water use, such as when the cumulative impacts of water uses approach the numeric thresholds in Section 3.3.4.2 or when the applicant elects to use an alternative simulation condition or evaluation methodology pursuant to the narrative standard of Section 3.3.4.1.
- H. If the applicant asserts the exclusions in Sections 3.3.1.B.2 or 3.3.1.B.4. or considerations in Section 3.3.7 apply to wetlands or other surface waters within the cone of influence of the proposed water use, the applicant must provide appropriate information supporting this assertion, including relevant information from the permit file.
- ~~H. If the applicant asserts a previously issued District permit authorized impacts to a wetland or other surface water, did not protect a wetland or other surface water, or authorized mitigation for impacts to a wetland or other surface water, the applicant must provide appropriate information from the permit file supporting this assertion.~~

### **3.3.3 Categorization of Wetlands and Other Surface Waters**

Wetlands and other surface waters subject to consideration under this Section are grouped into three categories based on their normal hydrologic characteristics and their susceptibility to harm as a result of hydrologic alteration from water use withdrawals. Normal hydrologic characteristics are defined as the hydropattern that would occur without the impact of any authorized or unauthorized water uses.

In cases where existing surface water management "works" have permanently altered the normal hydrologic characteristics of the wetland or other surface water, the categorization shall be based on the resulting hydrology caused by the permanent alteration. Alterations that can effect wetland hydrology include canals, ditches, roads, structures or levees. The hydrologic characteristics resulting from construction or alterations undertaken in violation of Chapter 373, F.S., or District rule, order or permit, shall be evaluated based on historic, pre-violation conditions, as if the unauthorized hydrologic alteration had not occurred.

Wetlands and other surface waters are subject to evaluation under this Section, in accordance with the following:

Category 1: Natural lakes, deep ponds, rivers, streams, deepwater slough systems, coastal intertidal wetlands, and cypress strands that are permanently flooded throughout the year, except in cases of extreme drought. These include "permanently flooded" and "intermittently exposed" surface waters in the National Wetland Inventory maps.

Category 2: Seasonally inundated wetlands including cypress domes, emergent marshes, cypress strands, mixed hardwood swamps, or shrub swamps and exhibit standing water conditions throughout most of the year. These include "semi-permanently flooded" or "seasonally flooded" wetlands in the National Wetland Inventory maps.

Category 3: Temporarily flooded and saturated wetlands including wet prairies, and shallow emergent marshes, as well as seepage slopes, bayheads, hydric hammocks, and hydric flatwoods. These include "temporarily flooded" and "saturated" wetlands in the National Wetland Inventory maps.

This subsection shall be applied on a case by case basis to categorize wetlands and other surface waters based on their normal hydrologic characteristics and susceptibility to harm as a result of hydrologic alterations from water use withdrawals.

### **3.3.4 "No Harm" Standards and Thresholds**

To demonstrate that no harm will occur to wetlands and other surface waters, reasonable assurances must be provided by the applicant that the narrative

standard for Category 1, 2 and 3 wetlands and other surface waters in Section 3.3.4.1. is met.

For Category 2 wetlands, demonstration that the narrative standard is met shall be achieved through complying with the numeric threshold set forth in Section 3.3.4.2., unless such threshold is deemed by the District to be inapplicable due to the site specific considerations identified in Section 3.3.4.3. Site specific considerations may render the numeric threshold inapplicable. In these cases, the applicant shall demonstrate that harm as defined in the narrative standard in Section 3.3.4.1 will not occur, notwithstanding the numeric threshold.

The analysis for determining harm shall include an assessment of the projected hydrologic alterations caused by the water use and a cumulative assessment encompassing other existing legal uses, and resulting impact on the wetlands and other surface waters. In circumstances of cumulative contributions to harm, an applicant shall only be required to address its relative contribution of harm to the wetlands and other surface waters.

In the evaluation of the applicant's water use, the District shall consider the extent of hydrologic alterations to wetlands and other surface waters caused by the applicant's water use based upon analytical or numerical modeling, or monitoring data, as required by Section 1.7.5., and this Section.

The determination of harm shall consider the temporary nature of water use drawdowns and seasonal application of certain water uses. Such consideration includes a determination of whether the hydrologic alteration is constant or if it recovers seasonally.

#### **3.3.4.1 Narrative Standard**

For Category 1, 2, and 3 wetlands and other surface waters, an applicant shall provide reasonable assurances that hydrologic alteration caused by the water use shall not adversely impact the values of wetland and other surface water functions so as to cause harm to the:

- A. abundance and diversity of fish, wildlife and listed species; and
- B. habitat of fish, wildlife, and listed species.

#### **3.3.4.2 Numeric Thresholds for Category 2 Wetlands**

Unless site specific considerations identified pursuant to Section 3.3.4.3 exist indicating the following numeric threshold for Category 2 wetlands is not applicable, the water use shall not be considered harmful when the modeled drawdown resulting from cumulative withdrawals in the unconfined aquifer beneath all portions of the wetland is less than 1.0 feet.

Water use withdrawals shall be modeled based on a maximum monthly allocation simulated for 90 days without recharge and as otherwise directed under Section 1.7.5.2. If the applicant chooses to use an alternative simulation condition, the narrative standard in Section 3.3.4.1 shall apply.

### **3.3.4.3 Site Specific Considerations**

Site specific information shall be submitted by the applicant, if requested by the District or if otherwise deemed relevant by the applicant, for determining whether the narrative standard in Section 3.3.4.1. is met, including whether the numeric threshold in Section 3.3.4.2 is applicable. The applicant shall provide site specific information on the local hydrology, geology, actual water use or unique seasonality of water use, including, but not limited to:

- A. Site specific hydrologic or geologic features that affect the projected drawdown shall be evaluated, including the existence of clay layers that impede the vertical movement of water under the wetland, preferential flow paths, seepage face wetlands that receive high rates of inflow, or the effects of soil depth and type on moisture retention, to the degree that actual field data support how these factors affect the potential for impacts of the water use on the wetland or other surface water.
- B. If the applicant asserts that the actual water use has not caused harm to wetlands or other surface waters, site specific information on the condition of the wetlands or other surface waters in question must be provided in conjunction with pumpage records or other relevant evidence of actual water use to substantiate the assertion. Applicable monitoring data as described in Section 1.7.5.1 shall be submitted, if available.
- C. Other relevant factors or information in assessing the potential for harm to wetlands and other surface waters, such as the condition, size, depth, uniqueness, location, and fish and wildlife utilization, including listed species, of the wetland or other surface water.

### **3.3.5 Elimination or Reduction of Harm**

To the extent that harm is determined, the applicant shall modify the project design or water use, to the extent practicable, to eliminate or reduce harm to protected wetlands and other surface waters.

Modifications to the project or water use include developing alternative water supply sources, modification of pumpage, relocation of withdrawal facilities, implementation of water conservation measures and creation of hydrologic barriers.

A proposed modification that is not technically capable of being implemented, not economically viable, or adversely affects public safety through the endangerment of lives or property, is not considered "practicable". In determining whether a proposed modification is practicable, consideration shall be given to:

- A. Whether the wetlands and other surface waters have been impacted by authorized activities other than the water use (such as development, adjacent land use, drainage activities, operations of Works of the District, or an Environmental Resource or Surface Water Management Permit), and will continue to be impacted by such activities;
- B. The cost of the modification for elimination or reduction of harm compared to the environmental benefit such modification would achieve, including consideration of existing infrastructure; and
- C. As applicable for permit renewals, the considerations provided in Section 3.3.7.

The District shall not require the applicant to implement design modifications to reduce or eliminate harm when the ecological value of the functions provided by the wetlands and other surface waters to be adversely affected is low based on site specific analysis, and the proposed mitigation will provide greater long term ecological value.

### **3.3.6. Mitigation of Harm**

Upon determination by the District that elimination or reduction of harm is not practicable, the District shall consider proposals for mitigation. Mitigation is required to offset the harm to the functions of wetlands and other surface waters caused by the water use as described herein.

In certain cases, mitigation cannot offset impacts sufficiently to yield a permissible project. Such cases often include activities that harm Outstanding Florida Waters, habitat for listed species, or wetlands or other surface waters not likely to be successfully recreated.

Mitigation shall not be required for impacts to wetlands and other surface waters previously mitigated through federal, state or local permit authorizations, such as other consumptive use permits or Environmental Resource or Surface Water Management Permits.

The District shall assess the condition of the wetland or other surface water as it exists at the time of the application submittal when determining mitigation requirements.

For permit renewals, mitigation requirements shall also be determined based on the provisions in Section 3.3.7.

### **3.3.6.1 Application of Environmental Resource Permit Provisions in Determining Mitigation Requirements**

A. In the application of this Section, the following Environmental Resource Permit provisions within the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, regarding mitigation, shall be applied:

Section 4.2.2.3 regarding Assessment of Impacts;

Section 4.3.1 regarding Types of Mitigation, specifically Sections 4.3.1.1, 4.3.1.3 and 4.3.1.8;

Section 4.3.2 regarding Mitigation Ratio Guidelines;

Section 4.3.3 regarding Mitigation Proposals;

Section 4.3.4 regarding Monitoring Requirements for Mitigation Areas;

Section 4.3.5 regarding Protection of Mitigation Areas;

Section 4.3.6 regarding Mitigation Success; and

Section 4.3.7 regarding Financial Responsibility for Mitigation;

The above sections are herein incorporated by reference through Rule 40E-2.091, F.A.C.

B. Mitigation to offset the proposed harm shall be provided within the same drainage basin as the proposed harm, unless the applicant demonstrates that mitigation proposed outside of the drainage basin can fully offset the harm. Drainage basins, for purposes of this section, are set forth in Figure

4.2.8-1 of the Basis of Review for Environmental Resource Permit Applications, herein incorporated by reference.

- C. In determining whether mitigation proposed outside of the drainage basin fully offsets the harm, consideration shall be given to the effect on the values of the remaining wetland and other surface water functions within the drainage basin, if the harm is mitigated outside of the drainage basin.

### **3.3.7 Consideration of Elimination or Reduction, and Mitigation of Harm, for Consumptive Use Permit Renewals**

In addition to the considerations in Sections 3.3.5 and 3.3.6, for renewal of a consumptive use permit, the determination of whether elimination or reduction, and mitigation, will be required for impacts to wetlands or other surface waters not identified or expressly authorized to be impacted, by the previous consumptive use permit, shall be made considering the following:

- A. The existing wetland and surface water functions;
- B. The degree to which the wetland or other surface water functions are reasonably expected to recover if the withdrawal is reduced or eliminated;
- C. The projected impacts on the existing functions of the wetlands or other surface waters from continuing the water use;
- D. Whether the wetland or other surface water is connected by standing or flowing surface water to, or is part of, an Outstanding Florida Water, Aquatic Preserve, state park, or other publicly owned conservation land with significant ecological value; and
- E. As part of the fish and wildlife utilization considerations in subsections A. B. and C., above, special consideration shall be given to whether the wetland or other surface water is used for resting, nesting, breeding, feeding or denning by listed species.

In addition to the considerations in Sections 3.3.5 and 3.3.6, for renewal of a consumptive use permit, the determination of whether elimination or reduction, and mitigation, will be required for impacts to wetlands or other surface waters not identified, or authorized for impact, by the previous consumptive use permit, shall be made considering the following:

~~A. The projected impacts on wetlands or other surface waters from continuing the water use in comparison to the remaining functions of the wetlands or other surface waters;~~

~~B. Whether the wetland or other surface water is connected by standing or flowing surface water to, or is part of, an Outstanding Florida Water, Aquatic Preserve, state park, or other publicly owned conservation land; and~~

~~C. Whether the wetland or other surface water is used for resting, nesting, breeding, feeding or denning by fish and wildlife, particularly listed species.~~

~~The withdrawal of water must not cause adverse impacts to environmental features sensitive to magnitude, seasonal timing and duration of inundation. Environmental features that will be evaluated by District staff when determining withdrawal impacts include:~~

~~A. Natural surface water bodies such as lakes, ponds, springs, streams, estuaries, or other watercourses;~~

~~B. Wetland habitat except those wetlands previously affected by drainage, land clearing, earthwork, or those which have been invaded by exotic species and are in a state of environmental decay;~~

~~C. Created wetland habitats and their relationship to local and regional water resources and associated ecosystems;~~

~~D. Habitat for threatened or endangered species; and~~

~~E. Environmental features which are dependent upon the water resources of the District.~~

~~Drawdown impacts to surface water management water bodies created solely for purposes of flood water retention or detention, are not considered to be adverse unless they hydraulically support wetlands which are natural or are required through mitigation by the District or other permitting governmental entity or if the drawdown of the lake system detrimentally affects the public health and safety.~~

~~District staff will review the Applicant's submittal and identify the environmentally sensitive areas that are directly related to the water resources of the District. An evaluation of the impact of the Applicant's withdrawal, combined with other withdrawals from existing legal users, on those environmental features will be performed.~~

~~To facilitate the District's assessment of the environmental impact of withdrawals, Applicants shall be required to provide information such as aerial photographs, topographic maps, baseline hydrologic data, environmental assessments, aquifer characteristics, soil profiles and any additional information relevant to the environmental impacts of the withdrawal. District Staff may also inspect the site to delineate environmental features and evaluate the effects of existing withdrawals.~~

~~Potential environmental impacts will be evaluated by comparing the existing natural system to the predicted post-withdrawal conditions.~~

## **5.1 Standard Permit Conditions -**

(A. - H. No change)

- I. Permittee shall mitigate harm to existing off-site land uses caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm as determined through reference to the conditions for permit issuance, includes:

(1) Significant reduction in water levels on the property to the extent that the designed function of the water body and related surface water management improvements are damaged; not including aesthetic values; The designed function of a water body is identified in the original permit or other governmental authorization issued for the construction of the water body. In cases where a permit was not required, the designed function shall be determined based on the purpose for the original construction of the water body (e.g. fill for construction, mining, drainage canal etc.).

(2) Damage to agriculture, including damage resulting from reduction in soil moisture resulting from consumptive use; or

(3) Land collapse or subsidence caused by reduction in water levels associated with consumptive use.

~~A) Significant reduction in water levels in an adjacent surface water body, including impoundments, to the extent that the designed function of the authorized structures and facilities is impaired,~~

~~B) Land collapse or subsidence caused by reduction in water levels, or~~

~~C) — Damage to crops and other types of vegetation caused by withdrawals that impair the operation of a seepage irrigation system.~~